

Arent Fox Kintner Plotkin & Kahn

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February 28, 1992

EPA Region 5 Records Ctr.



Ms. Karen A. Vendl
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Dear Karen:

We were both surprised and disappointed by your letter of February 21, 1992, since based on the earlier technical meetings with EPA's staff, we thought we were on the right track. We are, however, pleased that substantial progress toward resolving EPA's concerns appears to have been made in our telephone conference call on Wednesday, February 26, 1992. The purpose of this letter is to summarize how we will be proceeding to address EPA's concerns and to point out some related legal issues that also need to be addressed.

We decided in the conference call to try to separate and deal with those issues that looked like they involved routine technical questions that could be agreed upon quickly. Those included questions related to the health and safety plan, the quality assurance plan (QUAP), civil engineering questions, and monitoring questions. We understand that a team from Roy Ball's office at ERM will meet with you and others at EPA on these issues early next week.

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With respect to the contracting strategy questions, there were two matters discussed. First, in our effort to both reduce costs and to obtain the best possible work on the vapor extraction program, we had proposed a two track strategy. Separate bids were proposed to be sought on each element of the work (e.g., vapor extraction, cap, monitoring, etc.) and also comprehensive bids for all work were to be sought. The concept of separate bids, however, introduced an element of complexity and raised questions about the responsibility for completion of the work, particularly where two elements (e.g., the cap and the vapor extraction system) have to work together.

Second, in order to take maximum advantage of the expertise of the vapor extraction contractor (recognizing that vapor extraction is still an evolving science) we focused on a performance specification coupled with those design details that were required by Attachment A to the Consent Decree. This "hybrid" design approach complied with the Decree and provided maximum flexibility, but it left no opportunity for EPA to review the final detailed design. And the current

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"hybrid" design lacked, in EPA's view, some of the details that it wants to see in order to assure that the work in the field is done strictly in accordance with the approved design.

To address the first problem, the Trustees have decided to move toward a more conventional contracting approach involving the use of a prime contractor that would have overall responsibility for all (or almost all) functions, including responsibility for the performance of any sub-contractors chosen. In a few limited cases, there still may be an advantage to having a separate job specific contractor (e.g., for site preparation). But having one basic prime contractor would clarify responsibly for assuring proper completion of the work and the proper "fit" between key work elements.

To address the second problem, we discussed the possibility of introducing into the process a "conditional approval" and "second look" concept not currently in the Consent Decree. Under this approach, EPA would approve the "hybrid" design on a "conditional" basis, recognizing that some of the details that EPA would ideally like would not be included. EPA would then have a "second look" when final details and shop drawings of the vapor extraction system were prepared by the sub-contractor.¹⁷

That approach would seem to work well from a technical standpoint. It would provide the flexibility for innovative design details from experienced sub-contractors, while still providing EPA with a final detailed "cook book" against which performance in the field could be measured. A time period would have to be built into the Consent Decree for this "second look". Since all time periods for compliance run from the date of EPA approval, the time clock would have to pause while the "second look" approval was being obtained from EPA.

We will call EPA's attorneys next week to discuss with them the possible mechanism for accomplishing the change in the Consent Decree.

We sincerely appreciate the cooperative and nonadversarial approach taken in our telephone conference toward identifying and solving the problems. We continue to want to work with you to clean up the site as rapidly as feasible

¹⁷ The only alternative would be to try to design the vapor extraction system to a much higher level of specificity and detail now. In an innovative area, however, this would have the effect of removing the flexibility that is important in order to take advantage of the skill of the vapor extraction sub-contractor selected. It would introduce a rigidity into the process that would actually reduce the chances that the system will be successful.

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to meet the Consent Decree standards, and to address all of the problems raised in your letter.

Please let us know how the meetings with ERM progress next week.

Thank you for your cooperation.

Very truly yours,

Norman W. Bernstein,
Roy Ball, John Kyle and
Tim Harker, Trustees

cc: Deborah Albright, IAG
Jim Smith, IDEM
Thomas Krueger, ORC
Barbara Rogers, DOJ